

APPEAL NO. 020885
FILED MAY 22, 2002

Following a contested case hearing held on March 7, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by finding that the appellant's (claimant) job search was directed towards qualifying for supplemental income benefits (SIBs), not finding a job, and that he did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The hearing officer conclude that the claimant is not entitled to SIBs for the fifth quarter. The claimant has filed an appeal of these findings and the conclusion, contending that they are against the great weight of the evidence. The respondent (carrier) has filed a response urging our affirmance.

DECISION

Affirmed.

The claimant testified that he injured his back at work on _____. According to the medical records, he has thus far not elected to undergo the lumbar spine fusion surgery which has been recommended to relieve his chronic low back pain. The claimant, who indicated that he cannot speak, read, or write English and who has a fourth grade education in Mexico, said he attempted to work as a restaurant dishwasher during one week of the qualifying period for the fifth quarter but could not keep up with the pace demanded of him. His treating doctor wrote during the qualifying period that the claimant's back condition will not permit him to work as a busboy/dishwasher. The claimant stated that, during the qualifying period, his job search efforts consisted of driving past restaurants and stopping to inquire about employment. According to his Application for Supplemental Income Benefits (TWCC-52), the claimant inquired about employment with 35 businesses, 33 of which were restaurants. He agreed he had no experience as a cook, that he had not worked as a restaurant server, and that some dishwasher tasks involved lifting heavy racks of dishes.

The hearing officer noted the claimant's admission that he would pick up applications from several restaurants on his various trips and later complete them and turn them in one at a time and felt that the claimant was simply going through the motions of qualifying for SIBs rather than making a genuine effort to actually get a job. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Having reviewed the evidence of record, we are satisfied that the challenged findings of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIREMAN'S FUND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN ST.
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge